IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1102 of 1990

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

==========

FAKHRUNNISSA N. SAIYAD - Petitioner(s)

Versus

SECRETARY - Respondent(s)

==========

Appearance :
MS SEJAL K MANDAVIA for Petitioner
MR NAGESH SOOD AGP for Respondent-State
==========

CORAM : *HONOURABLE MS. JUSTICE R.M.DOSHIT*

Date : 17/10/2005

ORAL JUDGMENT

The petitioner, a part-time employee in the Legal Department, Sachivalaya has approached this Court under Article 226 of the Constitution and has prayed that she be regularized in service as a Class-IV servant.

By Order dated 7th February, 1984 made by the Under Secretary to the Government, Legal Department, the petitioner was appointed as a Peon for a period from 7th February, 1984 to 6th March, 1984 by stop gap arrangement till a person recommended by the Employment Exchange Office was duly appointed. Since then, the petitioner appears to have been appointed as a part-time employee for six hours daily on a consolidated pay of Rs. 450/= per month. The petitioner has, by this petition, claimed right to regularization in service and appointment as Peon in Class-IV service in regular pay scale.

The petition is contested by the State Government. It is stated that the petitioner's appointment on 7th February, 1984 was by stop gap arrangement and that after expiry of the period of appointment on 6th March, 1984, she was not continued as a Peon. However, as and when required, she was appointed to work as part-time employee on a consolidated pay. It is further stated that upon adequate number of peons available and the facilities provided, the petitioner's service was not required even as a part time employee.

The petitioner's claim for regularization in service is not justiciable. *First*, the petitioner's entry in

service was *de hors* the rules. As the Order dated 7th February, 1984 suggests, she was appointed as a Peon as a stop gap arrangement in one of the two then existing vacancies. Evidently, the said appointment was contrary to rule of equality applicable for appointment to any public service. It is not the case of the petitioner that the said appointment was continued after the specified period. The only two other orders which are produced on the record are that of appointment as a part time employee on a consolidated pay for a specified period made on 20th September, 1988 and 16th January, 1990. Considering the aforesaid orders and the reply submitted by the State Government, it appears that the petitioner's service even as a part time employee was not continued since 7th March, 1984, as submitted by Ms. Mandavia. Further, Ms. Mandavia has admitted that for any appointment in Class-IV service in the State Government, the minimum educational qualification required is passing of IV-Standard examination. She concedes that the petitioner does not possess such educational qualification. Thus, the petitioner is not eligible for appointment in Class-IV service. This Court exercising *extra ordinary* jurisdiction under *Article* 226 of the Constitution shall not issue any direction to the State Government to act contrary to its rules.

Ms. Mandavia has relied upon the judgments of this Court [*Coram* : ***Kundan Singh, J.***] dated 6th September, 2002 passed in the matters of J.J Chavda vs. Secretary and of Mahesnbhai Gandabhai Prajapati & Anr. vs. State of Gujarat [*Special Civil Applications Nos. 1664 of 1990 & 2287 of 1990*]. She has submitted that in the similar set of facts, this Court had ordered regularization of the concerned employees. I must say that Ms. Mandavia has overlooked the fact that the petitioners in those petitions had passed IX Standard Examination and were thus qualified for being appointed as a Peon. She has also relied upon the judgment of the *Hon'ble* Supreme Court in the matter of ***Gujarat Agricultural University v. Rathod Labhu Bechar & Ors.*** [AIR 2001 SC 706]. She has submitted that in the said matter, the High Court had directed regularization of service of the employees working for a long period irrespective of their eligibility. The *Hon'ble* Supreme Court upheld the said decision of the High Court. The *Hon'ble* Court held that the workers in job for long number of years without complaint by itself is a sufficient qualification. The said matter arose from an industrial dispute raised by the concerned workmen. The concerned workmen were engaged as daily rated labourers in the category of skilled, semi-skilled, unskilled or field labourers. It should be

noted that in that case, a large number of labourers were engaged by the appellant-University as labourers for good many years. Here is a case of a singular employee who does not possess the requisite qualification nor was her entry in service through proper selection procedure. She is not qualified for employment in Government service even at the lowest level. Besides, there is nothing on the record to suggest that she had served continuously since 7th February, 1984. In the circumstances, a similar relief as was granted to the labourers in the Gujarat Agricultural University cannot be granted to the petitioner.

For the aforesaid reason, the petition is dismissed. Rule is *discharge*d. *Interim* relief stands vacated.

At the request made by Ms. Mandavia it is directed that the *status quo* ordered to be maintained pending petition shall continue to operate for a period of four weeks from *today*.

{Miss R.M Doshit, J.}

*Prakash**